

parties according to the partition, see *Hardy v. Summers*, 10 G. & J. 318, and see also *Ridgely v. Crandall*, 4 Md. 435; between tenant for life and remainderman in fee for the purchase of the remainder, executed by payment of the purchase money and retention of possession, as owner of the fee, as in *Drury v. Conner*, 6 H. & J. 289, for, ordinarily, between vendor and purchaser payment of purchase money, which can be recovered back if the contract is annulled, is not part performance, *Artz v. Grove*, 21 Md. 456; between a debtor and trustees for the benefit of his creditors, on their giving an extension of credit, executed by possession on the one hand and the granting of the indulgence on the other, to the exclusion, too, of creditors claiming a lien but having no better equity, *Moale v. Buchanan*, 11 G. & J. 314; between a purchaser unable to pay the entire purchase money for land and a third party to whom the legal title is conveyed, on an advance by him for that purpose, to be reconveyed on his reimbursement, executed by the conveyance of the land and payment of interest in the meantime by the purchaser accordingly, *Artz v. Grove supra*, (see, however, a similar case of *Smith v. Crandall*, 20 Md. 482, where relief was refused); or between joint purchasers, where one bought all the interest of the other to whom alone the legal title had been conveyed, executed by payment of the purchase money and the exclusive possession of the former, as in *Morris v. Harris*, 9 Gill, 19; and the books contain other similar cases, as well relating to contracts for the sale of lands as to other contracts within the prohibition of the Statute; see *Hardesty v. Jones supra*.⁷ But it is laid down on the highest authority that part performance by the party to be charged is not sufficient, *Caton v. Caton*, 1 L. R. Ch. App. 137. So a parol agreement before marriage for a settlement to be made after marriage will be supported in equity where there is part performance, *vide infra*. And an agreement to devise real estate may also be enforced against the devisees of land otherwise disposed of by the party making the agreement, but such are dealt with not less strictly than other contracts, *Mundorff v. Kilbourn*, 4 Md. 459; *Johns v. Johns*, Dec. term 1861 of the Court of Appeals; *Frisby v. Parkhurst*, 20 Md. 62, and 29 Md. 58.⁸ So if a party express his intention of bequeathing a legacy to a certain person, and the heir interposes and prevents the making or alteration of the will for this purpose, by promising himself to pay the legacy, the promise is binding, *Browne v. Browne*, 1 H. & J. 430; *Owings' case*, 1 Bl. 402; *Gaither v. Gaither*, 3 Md. Ch. Dec. 158.

It is settled, too, that the contract will be enforced to the extent of the interest proved to have been intended to pass under the agreement, as in *Drury v. Conner supra*; *Graham v. Yates*, 6 H. & J. 225. And equity, on parol proof of fraud, mistake or surprise, will, after part performance, but the better opinion is, not otherwise, reform a deed in which an omission has occurred, the contract being otherwise sufficiently es-

⁷ The doctrine of part performance does not apply when the contract relates to personal services, *Equitable Gas Light Co. v. Baltimore Co.*, 63 Md. 285; and in *Britain v. Rossiter*, 11 Q. B. D. 125, it is said to be confined to land cases.

⁸ See note 52 *infra*.